IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6949 of 2005
To
SPECIAL CIVIL APPLICATION No. 6953 of 2005
With
SPECIAL CIVIL APPLICATION No. 6950 of 2005
To
SPECIAL CIVIL APPLICATION No. 6953 of 2005
With
SPECIAL CIVIL APPLICATION No. 7021 and 7023 of 2005
With
SPECIAL CIVIL APPLICATION No. 7729 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PATEL ISHWARBHAI JIVABHAI - Petitioner(s)

Versus

REGIONAL PROVIDENT FUND COMMISSIONER & 3 - Respondent(s)

==========

Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
MR NIRAL R MEHTA for Respondent(s) : 1 - 3.
MR DG CHAUHAN for Respondent(s) : 4,
==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/09/2005

ORAL JUDGMENT

1. Rule. Mr. Niral Mehta waives service of Rule on behalf of the provident fund authorities and learned advocate Mr. Chauhan waives service of Rule on behalf of respondent no.4 in Special Civil Application No. 6949/05.

2. This group of petitions involve similar question of law and facts. They have, therefore, been heard together and are being disposed of by this common order.

3. In essence the petitioners challenge the individual orders passed in March, 2005 by the Recovery Officer and Assistant Provident Fund Commissioner. Such orders have been produced by the petitioners along with the petitions. For the sake of convenience, if one examines Special Civil application No. 6949/05, the petitioner has produced an order dated 21st March 2005 in which it is stated inter alia that whereas a sum of Rs. 7,64,014/- has not been paid in satisfaction of the recovery certificate issued by the authority, the officer in charge of the police station, Visnagar is commanded to arrest the petitioner who is a defaulter and to bring him before the authority within 24 hours of his arrest unless the defaulter pays the sum of Rs. 7, 64, 014/-. It is not in dispute that against all petitioners such arrest

warrants have been issued, except in case of the petitioners of Special Civil Application No. 7021/05 and 7023/05. Learned advocate Ms. Yogini Parikh appearing for these petitioners submitted that in their case so far no arrest warrants have been issued and she has approached the Court at the stage of show cause notice issued by the authorities. Learned advocate appearing for the petitioners submitted that they confine the petitions to the action on the part of the respondent in seeking to arrest the petitioners and the rest of the prayers are not being contested in the present group of petitions and they reserve their rights to agitate such prayers through proper proceedings in accordance with law.

4. It is the case of the petitioners that for default in payment of provident fund dues of the employees of Visnagar Taluka Audyogik Sahkari Mandali Limited which is a co-operative society the respondents are hauling up the petitioners though the petitioners are not liable personally to pay such dues. It is the case of the petitioners that though they were appointed as Directors of the said Co-operative Society during certain periods, their tenure as Directors was much later in point of time

compared to the period during which liability of payment of provident fund dues arose and was defaulted. It is also contended that in any case the petitioners were not involved in day to day management of the Co-operative Society and, therefore, cannot be held liable personally for payment of such dues in terms of the definition of term 'employer' and in particular in view of the provisions contained in Section 2(e)(ii) of the Employees Provident Fund and Miscellaneous Provisions Act. It is contended that though in response to the show cause notice issued by the authorities they have filed a detailed reply, without taking into consideration their contentions the provident fund authorities have issued arrests warrants thereby seriously jeopardizing their personal liberty. It is also contended that substantial properties, movable as well as immovable of the Co-operative Societies concerned are available for discharging the provident fund dues and in any case no coercive action of issuance of arrest warrant can be issued without first seeking to recover the provident fund dues from the property of the Co-operative Society. Provisions of Section 8B of the Employees Provident Fund and Miscellaneous Provisions Act are sought to be relied upon in this regard.

5. On the other hand learned advocate Shri Niral Mehta appearing for the provident fund authorities submitted that the petitioners have not discharged their duties under the Act. They were responsible for collection of the amount towards provident fund from the pay of the employees and also to ensure that the contribution of the employer is deposited with the authorities. He submitted that the competent authority after considering all relevant aspects of the matter issued the arrest warrants. He submitted that show cause notices were issued and contentions of the petitioners were taken into account.

6. Learned advocate Shri Chauhan appearing for the administrator in Special Civil Application No. 6949/05 submitted that the petitioners were the persons responsible for the day to day management of the Co-operative Society. He in short supported the stand of the authorities of the provident fund department. He submitted that he would be in a position to produce supporting materials and documents.

7. Considering the submissions made before the Court,

it appears that before issuance of arrest warrant number of questions are required to be considered. Such questions would include those such as the position of the petitioners vis-a-vis the Co-operative Society at the relevant time when the provident fund dues arose. It is required to be considered whether they could be held as employers within the meaning of Section 2(e) of the Employees Provident Fund and Miscellaneous Provisions Act. It is also necessary to consider whether the property of the Co-operative Society is sufficient to discharge such liabilities. It would be necessary to consider their exact position vis-a-vis the Co-operative Society and the period during which they were discharging their duties. All these questions would require consideration of material on record and decision of the authority before arrest warrants can be issued. As noted earlier the petitioners have been agitating that they were not responsible for the day to day management of the Co-operative Society and in fact the Co-operative Society was managed by a Manager and/or Managing Director. In short all these questions call for a serious consideration before the authority can decide to secure presence of these petitioners through an arrest warrant. I find that in the interest of justice it would be

appropriate and necessary to request the authority to consider all these questions on the basis of material that may be produced before it.

8. For the above purpose arrest warrants in all these petitions are quashed and set aside. Petitioners are given two weeks time to file their further reply if so desire in response to the show cause notice already issued against them. The administrator will also have an opportunity to produce before the provident fund authorities such material as may be available with him. This may also be done within two weeks from today. After considering this additional material and other material which may be in possession of the provident fund authorities and after disclosing such material to the petitioners in accordance with the principles of natural justice, it will be open for the authorities to take a fresh decision in accordance with law giving brief reasons thereof. With these directions the petitions are allowed to the limited extent. Rule is made absolute accordingly. No order as to costs.

(Akil Kureshi, J.)

smita/